IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16169 of 2003
With
SPECIAL CIVIL APPLICATION No. 16190 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVJI MEGHJI HARIJAN - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR NV ANJARIA for Petitioner(s) : 1,
MR SP HASURKAR A.G.P. for Respondent(s) : 1,3 - 4.
RULE SERVED for Respondent(s) : 1 - 4.
MR NIKHILESH J SHAH for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 5,
MR HS MUNSHAW for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. In both these petitions a common grievance has been made by the petitioners that under the guise of acquisition under the provisions of the Land Acquisition Act [for short 'the Act'] the respondents have illegally taken possession and occupied the lands of the petitioners and now they have released them from the acquisition on the ground that they are not required for the public purpose for which they were acquired. It is the case of the petitioners that they are the owners of the agricultural land bearing survey nos. 266 and 266/1 situated at Anjar and said lands were sought to be acquired for setting up a pumping station by the Anjar Area Development Authority [for short 'AADA']. It is the further case of the petitioners that while resorting to the proceedings under the Acquisition Act, the urgency clause was invoked by the respondents in the proceedings of acquisition in respect of land bearing survey no. 266 Paiki. However, no such urgency clause was invoked in the acquisition proceedings relating to land bearing survey no. 266/1 Paiki. The acquisition proceedings in respect of land bearing survey no. 266/1 Paiki have not been dropped. The crux of the petitioners' case is that when the illegal encroachment has been made and even at that time the respondents had known that ultimately these lands were not to be utilized for the public purpose, their possession of the lands for the period between the date of taking possession and date of release should be treated as illegal possession and the petitioners should be awarded adequate damages for the same as prayed for in the petitions.

1.1. This say of the petitioners is vehemently contested by the respondents by filing affidavit-in-reply. It is the say of the respondents that the lands were legally acquired by resorting to the procedure as provided under the Act for the implementation of the public purpose, namely construction of a pumping station. However, subsequently it was found that the area would be inadequate for setting up the pumping station, hence it was decided to release the lands from the acquisition and to give back the possession to the petitioners.

2. We have heard Mr. NV Anjaria, learned advocate appearing for the petitioners. By way of his submissions, he has reiterated the contentions that have been raised in the petitions. The same have been opposed by Mr. Hasurkar, Ld. AGP for the State and Mr. Shah, learned advocate appearing for AADA .

3. Having gone through the contents of the petitions and having given due consideration to the rival submissions, it clearly appears that the claim of the petitioners is for damages. It is based on the contention that the respondents had illegally acquired and retained the possession of the lands of the petitioners. Mr. Anjaria has tried to draw our attention to certain aspects of the case concerning the alleged illegal possession of the lands by the

respondents, from the record of the petitions. However, it clearly appears to us that while sitting under Article 226 of the Constitution of India, it would be difficult for us to appreciate the material on record to decide disputed questions of fact and to award damages to the petitioners. The civil suit can only be the adequate and efficacious remedy for this purpose. When such alternative remedy is available, it is not desirable that this Court should entertain the petitions on merits. On this sole ground, these petitions are dismissed. Rule discharged with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.